

March 24, 2013

I have had the unique opportunity to attend, participate, and video record nearly every "informational meeting" held in 11 counties in 2012 and conducted by the Montana Reserved Water Rights Compact Commission.

We are told that this Compact will settle all existing water rights claims being made by the CS&K Tribes. Where is the guarantee against future CS&K Tribal water rights claims, such as water quality, atmospheric moisture, groundwater, etcetera?

We are told this is an agreement in perpetuity... in other words a forever document. We are told that this Compact will create certainty and predictability. From whose perspective, the tribes, certainly not those landowners who felt safely insulated in their decision to invest in real property off the reservation?

We are told that we must settle before the sunset of the Montana Reserved Water Rights Compact Commission. Is that really our only choice? Can we not simply allow the Montana Water Court to proceed in the adjudication process as is their constitutional mandate, without a dime being spent out of individual western Montanans pocketbook?

We are told that wells drilled after 1996 on the Flathead Reservation are illegal, yet in speaking with the DNRC out of Helena, they claim these wells are legal, simply in suspense until such time the tribe quantifies their water right which would naturally include the current on-reservation minimum instream flows to support fisheries.

We are told that existing senior water right holders will become junior water right holders. We are told that federal reserved water rights have no beneficial use requirements. We are told that within the Compact, the federal government is reflected as the owner on the Abstracts of Water Right and that the CS&K Tribes are reflected as the Beneficial Owners. We can only assume then that Montana Water Court jurisdiction will be greatly reduced. What will your land be worth when the water spigot is turned off? This could be seen as a taking of property rights without due compensation, does that create certainty and predictability benefitting the people of western Montana?

We are told that the on-reservation Flathead Irrigation Project will receive millions of dollars toward project rehabilitation and betterment improvements. However, to quote Mr. Jay Weiner from the Arlee meeting in 2012, "to implement on reservation contribution dollars is a NEPA triggering event" which could result in a lengthy, expensive and potentially project nullifying Environmental Impact Assessment, known as an EIA, which could further result in a devastating Economic Impact statement.

We are told that this Compact is a settlement which would be far better than a protracted litigation, but where are the facts to support such a settlement? Wikipedia claims that an Environmental Impact Assessment, an EIA, often times is developed by the party lobbying for the legislative or regulatory change and this is driven by a need to fully understand the impact of government action on the economy and impacted industries such as agriculture. An EIA would also communicate the merits or detraction of the proposed action in a manner easily understood by the public, in this case the people of Montana.

An EIA would surely provide greater certainty and predictability, would it not, especially as it relates to economic impacts to existing irrigators, future water users, future city/county/state tax revenues, future municipal growth, potential aquifer basin closure and the consequences of a massive reduction of Montana state jurisdiction, on and off, the Flathead Indian Reservation?

At these informational meetings which I diligently recorded, my query was simple and direct... is there, for public review, a complete Environmental Impact Assessment (EIA), which I am told, could trigger an economic impact analysis?

The answers consistently given were NO with the following explanations:

1. Why would we, when you, (as in the people of Montana), never had the water rights to begin with! Well we now see what the Honorable Judge McNeil emphatically ruled on February 15th, 2013 and that is, On-Reservation irrigators indeed do have a water right appurtenant to their land and that it cannot be removed without due compensation!
2. We didn't see the need to waste tax payer money and precious time for such a report. How long has Compact Commission been working on this anyway? Does this make any sense at all, in good faith, when the compact commission has spent approximately \$1,000,000 per year for at least the last 5 years and probably more than 10 years?
3. Per Mr. Jay Wiener, and I paraphrase, we have been granted a 'Categorical Exclusion' since this is a settlement of litigation, which in itself, is not a triggering event for NEPA or MEPA, or in other words an EIA. Mr. Weiner, however, finally admitted on February 5th, 2013, that in fact, a categorical exclusion was not actually granted. Yet Mr. Weiner still holds to the belief that there is no need for an EIA. Really?

If you ask your child to retrieve a ball from the street, wouldn't you, in good faith, ask your child to look both directions before entering the street? Why wouldn't western Montanans want to look both directions as to the potential impact, now and into the future?

I am 100% in favor, for the CS&K Tribes water rights to be quantified and in the process to define the purposes for which that quantity of water is necessary.

After all, the Flathead Indian Reservation is an Open Reservation and Tribal water rights, though unique with instream flows to protect fisheries, can be adjudicated through the Montana Water Court as is required by the rest of the people of Montana since 1972. This settlement is not the only way. Especially if we have no credible way to determine any aspect of the potential harm this proposed governmental action will have on the human environment. There is no appropriate document for a proper analysis.

I have read and reread this Compact. It will diminish the quality of my ability to support my family and the dream to be united with my neighbors in perpetuity. Thank you for serving the people of Montana.

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